

**MINUTES  
BOARD OF ADJUSTMENT  
THURSDAY, MARCH 5, 2020  
HOOD ROOM, MATTHEWS TOWN HALL**

**PRESENT:** Chairman Jerry Meek; Vice Chairman Steve Lee; Members Jeanne Moore and Gary Smith; Senior Planner Rob Will; Board Attorney Anthony Fox; Senior Administrative Specialist/Deputy Town Clerk Shana Robertson.

**ABSENT:** Member Lee Jenson; Alternate Members Aaron Baggarly and Allen Crosby.

**CALL TO ORDER/INVOCATION:**

Chairman Jerry Meek called the meeting to order at 7:01 pm.

**APPROVAL OF THE MINUTES:**

Vice Chairman Steve Lee made a motion to approve the minutes of the September 5, 2019 meeting. Jeanne Moore seconded and the motion passed unanimously.

**ELECTIONS:**

Without a full Board in attendance, elections were deferred until the next scheduled meeting.

Mr. Meek explained to the applicants and citizens in attendance that by law, the Board of Adjustment can only grant a variance if four fifths of the Board votes in favor. Mr. Meek said that five members typically made up the Board of Adjustment but there were only four members available for the night's meeting. Mr. Meek explained that any applicant that wished to proceed would need all four members to vote in favor for the variance to be granted. The applicants had the option to defer until a full board could be in attendance.

The applicant requesting a variance for 341 Alexander Street said that he wished to proceed with the scheduled meeting.

The applicant requesting a variance for 425 Trafalgar Place said that he would like to defer his request until a full board would be available.

**VARIANCE REQUEST: BA 2020-1, 341 Alexander Street**

**SWEARING IN:**

Senior Planner Rob Will and Andrew Albers were sworn in by Mr. Meek.

**STAFF REPORT:**

Senior Planner Rob Will said that the applicant was requesting a variance to the 35 foot front yard setback requirement in the R-12 Zoning District. Mr. Will said that the subject property is located at 341 Alexander Street in Matthews North Carolina and is further identified as tax parcel 227-022-18. The home was constructed in 1941 and subsequently expanded over time. The existing covered screened-in deck, located on the south side of the house, currently encroaches into the front yard setback by 8.5 feet. Mr. Will said

that it is located 26.5 feet from the property line. Because of this encroachment the structure is considered nonconforming as to the current setback requirements.

Mr. Will explained that the applicant is proposing to increase the size of the screened-in deck and construct an uncovered landing and stairs which will increase the existing non-conformity and is why they are seeking a variance from the Board. The applicant is requesting a variance from the 35 foot front yard setback to enlarge the south facing screened deck. This will result in an encroachment of 10.8 feet and the construction of an uncovered landing and stairs which will result in an encroachment of 17 feet.

The portion of Alexander Street where the subject property is located is a platted, public right-of-way but has not been accepted for maintenance and is unimproved. Mr. Will explained that it does not serve as access to any of the other residential properties in the area.

Mr. Will reviewed the site, the elevation, and the planned expansion.

Ms. Moore asked if the new addition to the screened in porch would line up to the front edge of the home. Mr. Will said that it would.

Mr. Lee clarified that the fence that was shown in pictures did not represent the property line. Mr. Will said that was correct.

Ms. Moore asked if there were other neighbors in the area that would face the same situation. Mr. Will said that it was not likely that other neighbors would have the same issues. Mr. Will said that the subject property fronted Alexander Street and all other neighboring properties had access from Freemont or Jefferson. Mr. Will explained that Alexander Street was unimproved and was a unique situation. Ms. Moore asked if this would set a precedence and Mr. Will said that it would not.

Gary Smith clarified that the other three properties had side yards on Alexander and only the subject property fronted Alexander. Mr. Will said that was correct.

#### **APPLICANT TESTIMONY:**

Andrew Albers 341 Alexander Street, Matthews, North Carolina, 28105 introduced himself to the Board. Mr. Albers said the he and his wife purchased the home at 341 Alexander Street four years ago. Mr. Albers said that they knew that the screened in porch would need to be replaced as it had structural and foundation issues. He said that they would like to remove the existing screened porch and construct a new screened porch in the same location with slightly larger dimensions. Mr. Albers said that knowing that the encroachment would be increased from the existing screened porch that is current, he was proposing that all the new improvements on the screened porch and the uncovered landing would not encroach on the front yard any further than the existing front porch.

Mr. Albers reviewed the illustration of the site saying that the front porch was 18.1 feet from the existing right-of-way. He said that what they were proposing would be at or behind that line. The screened porch area would be 24.2 feet from the right-of-way.

Mr. Smith asked if there was a reason the screened porch would need to be larger than what was existing. Mr. Albers said that the current screened area was 24x10 and there was only enough room to have a small table and a children's play area. He said that they were wanting more room to have a larger dining table in the space and a more comfortable seating area with room to walk.

Mr. Meek asked if a new porch was constructed with the same dimensions, would a variance be required or was it because it was a non-conforming use that predated the Unified Development Ordinance (UDO). Mr. Will said that if built with the same dimension, no variance would be needed as they would not be increasing the nonconformity. Mr. Will added that it would still be nonconforming. Mr. Meek clarified that it was not that the porch was going to be destroyed and rebuilt but that the porch would be rebuilt larger with further encroachment into the setback. Mr. Will said that was correct.

**APPROVED**  
**7/9/2020**



Board Attorney Anthony Fox said that he understood the nonconforming use provision did not allow for the expansion of a nonconforming use and clarified his understanding that this variance process would allow to vary the nonconformity and allow an expansion while being consistent with nonconforming provisions. Mr. Will said that this was not a nonconforming use but a nonconforming structure. A nonconforming use could not be expanded and you could not have a use variance. Mr. Fox said that typically you could not expand a nonconforming structure. Mr. Will said that was correct, not without a variance. Mr. Fox asked for clarification on the rules for a variance of a nonconforming structure. Mr. Will said that information was in Section 155.304 of the UDO. Mr. Fox read the provisions:

A nonconforming structure is any structure that existed prior to the adoption of this Title, or the effective date of any subsequent amendment, which does not comply with the minimum requirements of this Title in the district in which it is located. A nonconforming structure devoted to a use permitted in the zoning district in which it is located may continue only in accordance with the following limitations.

- A. Normal repair and maintenance may be performed to allow the nonconforming structures to maintain a safe and sound condition.
- B. Except as provided in §155.304.C. and D. immediately below, a nonconforming structure shall not undergo a change of use, renovation or expansion.
- C. A nonconforming structure may undergo a change of use or renovation without having to bring the structure into conformity with the requirements of these regulations provided that:
  - 1. The change in use or renovation does not increase the floor area of the structure; and
  - 2. The number of parking spaces provided for the use and the standards for landscaping and buffering are in conformity with the requirements of these regulations.
- D. A nonconforming structure may be expanded, without bringing the nonconforming structure into conformity with these regulations, only if the part of the structure to be expanded and the area of the lot into which the expansion is taking place are brought into conformity with the requirements of these regulations.
- E. A nonconforming structure shall not be moved unless it thereafter conforms to the standards of the zoning district in which it is located.
- F. An existing manufactured home as a principal residential building on an individual lot or located in a nonconforming manufactured housing park or subdivision in operation at the time of the adoption of these regulations may be replaced with another manufactured home provided the number of manufactured home units may not be increased beyond the number available before replacement and the replacing manufactured home must not create nonconforming yards, separation distances, or increase existing nonconforming yards or separation distances. Any replacement manufactured home not within the R-MH district shall comply with the lot development and design criteria as outline in 155.605.1.A.4. ('72 Code, § 1503) (Ord. 477, passed 2-8-88; Am. Ord. 872, passed 8-8-94; Am. Ord. 2083, passed 5-11-15) **[formerly known as §153.222]**

Mr. Will said that the structure was not being brought into conformity and warranted the request for a variance. Mr. Fox was concerned that the expansion was just increasing the nonconformity. Mr. Will said that it would increase the nonconformity and would require a variance. Mr. Fox said that the Board of Adjustment had the right to grant a variance to a setback but there was a nonconforming structure and by definition designed to get a sunset to make it conforming. Mr. Fox said to allow this type of change with an increase to the nonconformity was generally not the intent of the nonconforming use or structure provisions.

Mr. Smith asked if the Board of Adjustment was allowed, in this case, to grant a variance. Mr. Fox said that he was looking for an option that would allow the Board the ability to grant a variance for the ordinance provision. Mr. Fox added that the intent was to recognize that the nonconformity was due to a change in the ordinance requirements and expansion would be inconsistent with the sunset nature of the nonconforming structure.

Ms. Moore asked Mr. Albers if they planned to remove the structure. Mr. Albers said that the plan was to demo the existing screen porch structure and construct a new screened porch.

Mr. Will said that the variance would be to the setback requirements and read into record the Ordinance Interpretation and Determination letter that was administered by the Towns Zoning Administrator.

Mr. Meek asked if the porch was being rebuilt and not expanded, would a variance be required. Mr. Will said there would not be a need for a variance if it were being built in the original footprint as it would be normal repair and maintenance that would not increase the nonconformity.

Mr. Albers said that he understood that he would have needed a variance to demolish and construct a new screen porch. Mr. Albers said this was not for a repair but for a reconstruction as the structure was sinking into the ground. He said that the idea was that if a variance was needed regardless of size. The request would be made for an area more useable. Mr. Meek asked if Mr. Albers was given the option to build the porch in the current footprint, would he had needed a variance. Mr. Albers said that as he understood, if he demolished the nonconforming porch that was considered as bringing the structure into conformity and the new structure would then need a variance.

Mr. Meek said that it was the Board's authority to deny the variance, approve the variance that was requested, or approve the variance if even required. Mr. Fox said those were the options and a determination that the nature of the evidence that had been brought before the Board suggest the nature of the improvement was repair and was necessary to make the porch safe and therefore a permissible repair under the ordinance. Mr. Fox said that the Board could approve the variance and make findings for granting the variance.

Mr. Meek asked if the applicant could explain the unnecessary hardship to the Board. Mr. Albers said that the existing 35 foot front yard setback was located around the access door for the screened porch and he would have to go back 37 feet to clear the door. This would put the construction in the middle of the kitchen. Mr. Albers said that the kitchen would need to be reconfigured for the design of the porch access.

Mr. Smith asked if a full demo of the porch structure with a larger replacement structure qualify to be classified as a renovation. Mr. Will said that a renovation was typically something that was less than 50% of the property's value and the total demo and rebuild would not be considered renovations.

Mr. Albers said that his first goal was to make the structure stable. Mr. Albers added that the other 3 homes that abut the right-of-way for the unimproved Alexander Street had side yard setbacks of 10 feet. His property was the only front yard facing home and required a 35 foot setback. Mr. Albers said that made the property unique adding that the road did not even exist. Mr. Albers said that the new screened porch and landing structures would not be any closed to the Alexander Street right-of-way that the existing front porch

**TESTIMONY IN FAVOR:**

None

**TESTIMONY IN OPPOSITION:**

None

**DELIBERATION:**

Mr. Lee said that this was a fairly unique property because of the planned subdivision with regular lot lines and speaks to the spirit and intent of the ordinance.

Ms. Moore agreed and said that the side screened area was no further into the front setback than the front porch.

**APPROVED**  
**7/9/2020**



## FINDINGS OF FACT

1. That special or unique circumstances or conditions or practical difficulties exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts.

This parcel is unique in that it faces Alexander Street with a 35 foot front setback, other neighboring homes have 10 foot side yards setbacks along the same street.

2. That the special conditions or circumstances or practical difficulties do not result from the actions of the property owner or applicant, their agent, employee, or contractor. Errors made by such persons in the development, construction, siting or marketing process shall not be grounds for a variance except in cases where a foundation survey submitted to the Planning Director, or designee, before a contractor proceeds beyond the foundation stage has not revealed an error which is discovered later.

The applicant inherited this situation and has been forced to repair the structure due to age.

3. That the unique hardship situations cited by the applicant are not hardships resulting from personal or household members' circumstances which would no longer be applicable to the location if the applicant or household was no longer present at the property.

The applicant was seeking to repair the structure that was in disrepair. The property is peculiar in that it faces a platted but unimproved right-of-way which does not serve any other properties in the surrounding neighborhood. The hardship results from the location of the property, not personal circumstances.

4. That the strict enforcement of this Title would deprive the owner or applicant of reasonable use of the property that is substantially consistent with the intent of this Title.

The strict enforcement of this Title would deprive the owner or applicant of reasonable use of the property

5. That the granting of a variance will not result in advantages or special privileges to the applicant or property owner that this Title denies to other land, structures, or uses in the same district, and it is the minimum variance necessary to provide relief.

The granting of the variance would not result in advantages or special privileges to the applicant or property owner in their attempt to enjoy a safe porch that's configuration was similar to other homes in the neighborhood. The request was consistent with the remainder of the home and its position on the property.

6. That the proposed use and the appearance of any proposed addition or alteration will be compatible with, and not negatively impact, nearby properties.

There was no testimony received that showed that there would be a negative impact to other nearby properties.

7. That the variance shall not be materially detrimental to the health, safety or welfare of persons residing or working in the neighborhood. Consideration of the effects of the variance shall include but not be limited to, increases in activity, noise, or traffic resulting from any expansion of uses allowed by the variance.

There was no evidence that the requested variance would be detrimental to anyone in the neighborhood and was found to be consistent with other neighboring properties.

Alexander Street is unopened and unimproved road. The petitioner provided in his application justification for each element that the Board of Adjustment was required to find. No one spoke in opposition against this variance request.

Ms. Moore motioned that the variance request be granted. Mr. Lee seconds the motion and the variance request carried unanimously.

**RECESS**

Mr. Lee made a motion to recess the meeting at 7:46 pm. Ms. Moore seconded and the motion passed unanimously. The Meeting will continue on March 26, 2020 at 7:00 PM

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Shana Robertson', is written over the typed name and title.

Shana Robertson  
Senior Administrative Specialist/Deputy Town Clerk

**APPROVED**  
**7/9/2020**